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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-152
Telemessaging, Electronic Publishing, and Alarm Monitoring Services	)	

REPLY COMMENTS OF PACIFIC TELESIS GROUP

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SUMMARY

The record in this proceeding strongly supports a moderate approach by the Commission, one that clarifies how the Commission will enforce the rules made by Congress rather than one that makes new rules requested by parties who failed to achieve their aims in legislation. Congress recognized that consumers are benefiting from BOC participation in the telemessaging market and that consumers will obtain substantial new benefits from provision of electronic publishing by BOC separated affiliates and joint ventures, as well as via BOC teaming and other business arrangements. To be effective competitors, these entities need the same flexibility to run these businesses as any other companies. If the Commission were to add additional regulatory burdens to those already imposed by the 1996 Act, the cost to consumers would be high due to the impairment of these entities' ability to provide efficient service. There would be no offsetting benefits from more regulations, as those imposed by Congress are already adequate to prevent discrimination and cross-subsidy.

Parties who would like to see the BOCs and separated affiliates compete only with handicaps make several types of arguments. First, they imagine ambiguity in the Act where there is none. Second, they interpret a few words in the Act to imply pages of regulations. Third, they ask the Commission to impose rules that they concede are not required by the Act. In response, the Commission should adhere to the plain terms of the Act. In the few isolated cases where the Act can be read more than one way, the Commission should tip the balance in favor of competition, not regulation.

Our Reply Comments make a number of specific rebuttal points:

- Section 272, deals with interLATA information services and not with telemessaging, electronic publishing, or alarm monitoring.
- Nothing in the Act requires or permits segregating BOC video services from electronic publishing or any other service.
- Section 274 does not restrict BOC provision of electronic publishing via other competitors' in-region services, which do not present competitive concerns.

- Structural separation of the BOC functions described in §§274(b)(5) and (7) (personnel, property, equipment, and R&D) apply only to separated affiliates and not to joint ventures.

- There are no restrictions on the holding company's legitimate and necessary ability to provide for debt financing of a separated affiliate or joint venture.

- A separated affiliate may use any name, trademark, or service mark owned by the holding company, even if the BOC also uses it.

- Where §272 and 274 activities are combined in a single affiliate, the specific requirements of each section only apply to the activities regulated by that section.

- Separated affiliates, electronic publishing joint ventures, and teaming or other business arrangements may market and sell BOC telecommunications services without restriction.

- Affiliates other than BOC subsidiaries are allowed to joint market with separated affiliates and electronic publishing joint ventures.

- There are no limits on the types of joint marketing permitted by a BOC with a teaming or other business arrangement or with a joint venture.

- Section 274(d) is more than satisfied by the existing *Computer III* and *ONA* safeguards. That section does not require new tariff-like filings nor prohibit volume discounts.

- BOCs have the option to meet their nondiscrimination obligations by providing either the same service as that provided an affiliate or a functionally equal service.

- There is no basis in the Act or in policy to impose structural separations (including separation of marketing) on telemessaging.

- The telemessaging non-discrimination obligations can be completely addressed by *Computer III* and *ONA*, which should apply to all ILECs.

- Competitors' concerns about the availability of certain CEI, network disclosure, and CEI end user access functions do not reflect the facts and are adequately addressed by existing requirements.

- Collocation of third party enhanced service equipment is not required.

- The APA prohibits shifting the burden of proof to the carrier.

- Expedited processing is only required for alarm monitoring and telemessaging complaints upon a credible factual showing of material financial harm.

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Pacific Telesis Group ("PTG") hereby respectfully submits its Reply Comments in the above-captioned proceeding.

I. Introduction

The Comments filed in this proceeding include broad support for a reasonable approach to interpreting the new statutory requirements applicable to telemessaging, electronic publishing, and alarm monitoring services. Congress intended to assure that the American public would benefit from vigorous competition, including that provided by the BOCs, for these services. Congress established limited but strict structural and other safeguards tailored for each market sector as it deemed necessary. Many commenters urged the Commission to respect Congress's judgments by enforcing the law as written rather than by adding additional regulatory burdens that will only inhibit effective competition. Some commenters, however, ask the Commission to impose significant further requirements on the BOCs. Some of these commenters failed to understand the Act; others recognize full well the limits of what Congress intended, but still hope for something different here.

For example, Congress required structural separation only in a few, limited cases. It most certainly did not intend to re-impose the long-discredited structural separation of telemessaging, whose integrated provision by telephone companies has been one of the major success stories for consumers in this decade. Nor did Congress impose any structural separation on BOC provision of video services. Yet commenters ask for both of these activities to be separated. As we will show, these requests are baseless and could only benefit competitors, not the public.

Some commenters seek to restrict the financing of our competitive activities, or how we may staff or market them, in every case seeking additional regulations that Congress rejected. Without the minimal flexibility we are allowed under the Act, we cannot compete efficiently. In that event, the beneficiaries will be AT&T, MCI, or Time Warner—*not*, as Congress intended, the American consumer.

II. The Commission's Authority Under Section 272 Does Not Include Telemessaging, Electronic Publishing, Or Alarm Monitoring (¶¶19-27)

There is little serious dispute with the plain language of §§272, 274, 275, and 260, regarding the scope of the Commission's jurisdiction over electronic publishing, alarm monitoring, and telemessaging. An exception is AT&T's (pp. 2-4) convoluted interpretation of §272 that would extend the section's reach to services Congress clearly intended to be governed by other sections of the Act. AT&T asserts that §272(a) imposes structural separation and nondiscrimination requirements on (1) <u>any</u> interLATA information service that originates in the BOC's region (including electronic publishing and alarm monitoring) and (2) other information services that originate outside a BOC's region (except electronic publishing or alarm monitoring). In AT&T's view, §272 applies whenever there is any interLATA component to a service.[1] We have previously demonstrated in our Comments in CC Docket No. 96-149 that interLATA information services only include those that involve (1) a bundled interLATA

[1] It is unclear whether AT&T is arguing that §272 reaches all information services that may be accessed from outside a LATA. AT&T's comments in CC Docket No. 96-149 (p. 14) indicate that AT&T does not subscribe to that extreme view.

telecommunications component provided or selected by the BOC, (2) communications originating and terminating in different LATAs, and (3) an interLATA benefit to the end user.[2]

Section 272(a)(2)(B)(i) does not, contrary to AT&T's assertion, "specifically provide" that §272 applies to the type of incidental interLATA services authorized by §271(g)(4)[3]. Instead, §272(a)(2)(B)(i) merely omits §271(g)(4) from its list of exceptions. Failing to except §271(g)(4) is not the same as specifically including it. Section 272(a)(2)(B) applies to "[o]rigination of interLATA telecommunications services."[4] Telemessaging, electronic publishing, alarm monitoring, and information services are not telecommunications services. Therefore, they are not brought into §272 by §272(a)(2)(B). Section 272(a)(2)(C) makes it clear that Congress intended to subject only interLATA information services to §272. Electronic publishing and alarm monitoring are specifically excluded; telemessaging is omitted.

Consequently, AT&T's generalization about the scope of §272 is wrong. Correctly read, §272 does not apply to any telemessaging, electronic publishing, or alarm monitoring service, and only applies to other information services that meet interLATA criteria.

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[2] PTG Comments, pp. 9-12, PTG Reply Comments, pp. 5-6, CC Docket No. 96-149.

[3] Section 271(g)(4) refers to "the interLATA provision by a Bell operating company or its affiliate...of a service that permits a customer that is located in one LATA to receive stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA...."

[4] Sections 272(a)(2)(B)(i) and (iii) affirmatively exclude some information services from §272, but this does not imply that §272(a)(2)(B) includes information services.

III. The Commission Should Reject Proposals That Would Upset The Balance Established By Congress In Section 274 Between Protecting Ratepayers And Competition And Encouraging Expansion Of New Electronic Publishing Services (¶¶28-67)

A. The FCC Should Apply §274 Requirements Only To Electronic Publishing, As Congress Intended

1. Time Warner's Proposal Regarding Placement Of BOC Video Services Is Contrary to The Act And Could Discourage The Offering Of New Services

Time Warner (p. 30) asserts that "the Commission must require the BOC to choose to provide its video services with its local telephone services or with its electronic publishing services, but not both." Time Warner's rationale for this proposed requirement is its stated concern that BOCs may commingle local telephone services and electronic publishing services with their video services and negate the separation requirements of §274. This rationale is illogical. So long as the electronic publishing services are provided via a separated affiliate or joint venture, the BOC is in full compliance with the requirements of §274, regardless of where video services are provided. The BOC may choose to provide some video services within the BOC, while other video services are provided by the separated affiliate or joint venture, so long as accounting rules are met. Congress placed no restriction on how the video services are to be organized and neither should the Commission.[5] Such restrictions would serve no public interest and would limit the flexibility to offer new services for the benefit of consumers.

2. Inherent In The Definition Of Electronic Publishing Is Control Of Or A Financial Interest In The Content Of Information (¶31)

NYNEX (p. 6) correctly states that to be electronic publishing there must be "control of, or financial interest in, the content of the service," together with meeting other criteria. As we explained in our Comments (pp. 6-7), the financial interest and control criteria are useful to exclude services from the electronic publishing definition, although not to include

[5] Congress did not require a separate affiliate for any video services, including the BOC's or its affiliates' interLATA provision of video programming or other programming services. §§271(g)(1) and 272(a)(2)(B)(i).

them,[6] and the financial interest must be a legally protected intellectual property interest. For instance, Pacific Bell Interactive Media ("PBIM") is a new electronic publisher that recently started offering its first service, "At Hand." PBIM currently meets all the requirements of §274, and At Hand's information on various topics is accessed in a variety of ways, including via its affiliate Pacific Bell Internet Services, which provides Internet access gateway service. Such gateway services do not involve control or financial interest in content and are expressly excluded from the definition of electronic publishing in §274(h)(C).

The Joint Parties (pp. 3-4) are correct that the gateways excluded by Congress are even broader than those described in the MFJ and are not bound by obsolete technology. Both the language used by Congress[7] and its intent to bring new services to consumers support the Joint Parties' request for clarification.

Time Warner (p. 7), however, is incorrect to assert that "[b]y definition under section 274, in-region electronic publishers utilize BOC local telephone services." Electronic publishers have alternatives to using BOC services. For instance, in California we have already successfully negotiated interconnection arrangements with numerous carriers for their competitive provision of local exchange service. Competitors can provide local and other services directly, or by using unbundled network elements of Pacific Bell or by reselling Pacific Bell services. Use of any of these competitive services for dissemination of electronic publishing does not raise the concerns addressed by Congress, and thus Congress did not apply §274 to them, but only to "electronic publishing that is disseminated by means of such Bell operating company or any of its affiliates' basic telephone service...." §274(a).

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[6] For instance, directory assistance could not be included as an electronic publishing service, on this or any other basis, because §274(h)(2)(I) contains an express exception for directory assistance.

[7] Various gateway features, including "introductory information content," are not electronic publishing because they "do not affect the presentation of such electronic publishing services to users." §274(h)(2)(C). *See* Bell Atlantic (p. 5) and USTA (p. 3) for good descriptions of "gateways" used with web sites and the Internet in general.

B. *The FCC Should Reject Proposals That It Apply "Separated Affiliate" And "Electronic Publishing Joint Venture" Requirements Other Than As Prescribed By Congress (¶¶32-48)*

1. *The "Operated Independently" Requirement Should Not Be Used to Circumvent Congress's Intentions (¶35)*

AT&T (pp. 13-14) and Time Warner (pp. 11-13) are wrong in suggesting that Congress's use of the phrase "operated independently" in the opening sentence of §274(b) requires or permits the Commission to adopt a laundry list of additional restrictions and limitations not included by Congress in §274(b). Furthermore, Time Warner (pp. 14-15, 18, 20) suggests such an expansive reading of those two words that it would render meaningless many of the explicit provisions that Congress did include in §274.

The YPPA (pp. 3-4) accurately describes the purpose and meaning of "operated independently" as being "descriptive of the substantive requirements contained in Sections 274(b)(1) through (9)." "Operated independently" describes the purpose of the §274(b) substantive requirements, and provides a guide for interpretation and implementation of those substantive requirements. Congress showed that it was capable of listing the limitations it deemed necessary in the relationships between BOCs and separated affiliates or joint ventures. It created a very specific list of activities that are restricted, and specified to which activities and entities those restrictions apply. No legitimate purpose can be served by adding restrictions Congress did not want, and the public interest will be harmed by depriving customers of the benefits Congress sought to provide.

This is particularly true with respect to Time Warner's suggestion that the restrictions of §§274(b)(5) and (7) should be, in the name of "operated independently", imposed on the relationship between BOCs and electronic publishing joint ventures, even though Congress explicitly imposed those requirements only on separated affiliates. Time Warner simply ignores the plain statement of Congress's intent.

2. *Section 274(b)(2) Imposes No Limitations On BOC Parents Or Holding Companies (¶¶36-37)*

MCI (p. 4) and AT&T (p. 16) incorrectly attempt to extend the limitations of §274(b)(2) beyond the intent of Congress. Section 274(b)(2) limits separated affiliates' or joint ventures' "recourse to the assets of the Bell operating company." For purposes of §274, "Bell operating company" includes the BOC and any entity or corporation that is owned or controlled by the BOC. §274(i)(10). It does not include entities or corporations that own or control BOCs, such as holding companies.

Furthermore, the suggestion that the parent or holding company of a separated affiliate or joint venture cannot provide financial support to the separated affiliate or joint venture flies in the face of Congress's clear intention that those entities enter the market viably and would deprive customers of the benefit of increased competition in the provision of electronic publishing. The holding company is free under the Act to co-sign a debt instrument, or otherwise act as guarantor, for a separated affiliate or electronic publishing venture. The Act would require that such a debt instrument specify that the creditor would not have recourse on default to the assets of the BOC, but it could look to other assets of the holding company. Such arrangements may be necessary for the efficient financing of electronic publishing activities. As long as the BOC assets are insulated, there is no risk of cross-subsidy or harm to ratepayers.

3. *The Section 274(b)(5)(A) Personnel Limitations Apply Only Between BOCs And Separated Affiliates (¶¶39-40)*

MCI (pp. 4-5) incorrectly attempts to expand the applicability of §274(b)(5)(A), by suggesting that the Commission's tentative conclusion regarding the limitation on common officers, directors, and employees is "unduly narrow". In fact, the Commission's tentative conclusion is required by the language of the 1996 Act - §274(b)(5)(A) applies, by its specific terms, "between a separated affiliate and a Bell operating company". It does not apply to joint ventures, and nothing in the 1996 Act suggests that Congress intended the Commission to expand its applicability.

Furthermore, AT&T (pp. 16-17) incorrectly suggests that §274(b)(5)(A) limits the activities of BOC or separated affiliate officers, directors, and employees. It does not. It only prohibits BOCs and separated affiliates from having officers, directors, and employees in common. Furthermore, it does not prevent an affiliate of both the BOC and the separated affiliate from providing services to both of them. Nor does it impose limitations on a corporation's compensation system, as AT&T suggests. It is common for corporations to have compensation systems that base a portion of compensation, especially for officers and directors, on the performance of the corporation as a whole. This is consistent with the fiduciary duty of corporate officers and directors, and does not mean that the BOC and the separated affiliates will fail to comply with all of the requirements of the 1996 Act.

4. Section 274(b)(5)(B) Limits Only Common Ownership Of Property Between BOCs And Separated Affiliates (¶¶41-42)

MCI (p.5), Time Warner (pp. 17-18), and AT&T (pp. 16-17) all err in their interpretation of §274(b)(5)(B). MCI and Time Warner would apply the restriction on common ownership of property to joint ventures even though the section refers only to separated affiliates. There is no basis for that extension of the explicit language of the 1996 Act beyond what was intended by Congress. If Congress had intended that provision to apply to joint ventures, it would have done so, as it did with other parts of §274(b).

AT&T does not attempt to extend this section to joint ventures, but instead attempts to extend the scope of the limitation. Section 274(b)(5)(B) says that a BOC and separated affiliate may "<u>own</u> no property in common" (emphasis added). AT&T suggests that all common property interests are prohibited. This extremely expansive interpretation is not supported by the language of the 1996 Act, and is not in the public interest. Sharing of leases or otherwise sharing property will permit greater efficiency and consequently improved provision of services to end users.

5. *Time Warner's Interpretation of §274(b)(6) Is Just Plain Wrong (¶43)*

Section 274(b)(6) states that a separated affiliate or joint venture may not use for marketing its products and services the name, trademarks, or service marks of an existing [BOC] "except for names, trademarks, or service marks that are owned by the entity that owns or controls the [BOC]" (emphasis added). Time Warner (pp. 16-17) simply ignores the underlined part of this section in suggesting that when a BOC shares a name, trademark, or service mark with a holding company the "name, trademark, or service mark is the operating company's" and the §274(b)(6) prohibition applies. Whether or not the BOC and its holding company share a name, trademark, or service mark is irrelevant. What is relevant is who owns the name, trademark, or service mark. If it is owned by the holding company, the separated affiliate or joint venture may use it, regardless of whether the BOC also uses it.

6. *Section 274(b)(7) Applies Only To Separated Affiliates - It Does Not Limit The BOC Relationship With Electronic Publishing Joint Ventures (¶¶44-46)*

Here again, Time Warner (pp. 18-20) attempts to extend the provisions of §274 beyond Congress's intent, suggesting that the limitations imposed in §274(b)(7) should apply to joint ventures as well as separated affiliates. This is simply contrary to Congress's clear intent, and to the explicit language of §274(b)(7). While most of §274(b) clearly applies equally to joint ventures and separated affiliates, it is equally clear that Congress specifically applied two sections - 274(b)(5) and 274(b)(7) - only to separated affiliates. The Commission was correct in its tentative conclusion that the result of Congress's structuring of §274(b) is that the BOC is not prohibited from engaging in the activities specified in §274(b)(7) with electronic publishing joint ventures.

It is sound public policy to treat joint ventures less restrictively than separated affiliates in these two sections. Since BOCs have ownership interests in joint ventures, the BOCs need to be allowed to protect their ownership interests by having a role in the governance of the joint venture via common officers and directors. The limitation on ownership ensures against sole BOC control of the joint venture. In addition, the freedom to have common employees and property helps carry out Congress's §274(c)(2)(C) intent that a BOC "participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture." Similarly, the activities of §274(b)(7), including hiring of personnel, complement the activities allowed with joint ventures in §274(c)(2)(C).

Time Warner also attempts to expand the scope of the limitation imposed on separated affiliates. While correctly stating the limitation on research and development - that BOCs may not perform research and development on behalf of separated affiliates - Time Warner concludes, with no explanation or support, that the Commission should "simply prohibit" the BOC from sharing research and development work or results with separated affiliates. If Congress had intended to prohibit sharing of research and development, it would have done so. As Time Warner recognizes in the same section of its comments, Congress was "fully capable" of doing what it intended to do. The fact that §274(b)(7)(C) only prohibits BOCs from performing research and development on behalf of separated affiliates means that that is all Congress intended to prohibit.

Congress's care in avoiding a more restrictive provision furthers the public interest. In order to meet Congress's goals of bringing new services to consumers, the BOCs must be allowed and encouraged to do research and development, not held back. And whatever additional value can be gained from that research and development should be encouraged for the same reasons. So long as the BOC has and can establish its own legitimate interest in the research and development, which interest is independent of the separated affiliate, sharing the research and development increases the public good. For instance, a BOC may do research and development on how to better design buildings for disabled access. If it turns out that this research and development is useful to the separated affiliate, the public interest will benefit from allowing it to share the research and development, so long as affiliate transaction accounting requirements are met.

7. *Sections 272 and 274 Will Govern The Activities Specified In Each Section Even When The Activities Are Combined In A Single Entity (¶¶47-48)*

AT&T (p. 19) and MCI (p. 5) correctly state that when a BOC engages in activities subject to §272 and activities subject to §274 through a single entity, that affiliate must comply with the requirements of both §272 and §274. However, this does not mean that all of the requirements of §272 apply to electronic publishing activities or that all of the requirements of §274 apply to interLATA or manufacturing activities. To the extent there are requirements common to §§272 and 274, those requirements apply to the entire entity. But to the extent there are specific requirements applicable to different activities, those requirements apply only to those specific activities.

C. *The FCC Should Reject Proposals That Attempt To Destroy Congress's Careful Balance Between Permissible And Impermissible Joint Marketing (¶¶55-63)*

AT&T (p. 20) states that it agrees with the Commission's tentative conclusion that §274(c)(1) "prohibits (1) advertising of a BOC's telecommunications services with <u>the BOC's electronic publishing services</u>..., (2) making those services available from a single source, or (3) providing bundled discounts for the purchase of both electronic publishing and telecommunications services from the BOC." (emphasis added) Adoption of rules based on this conclusion would not make sense since the BOC cannot have electronic publishing services of its own under §274(a). They must be provided by other entities, including a separated affiliate, joint venture, or a teaming or other business entity. There is no prohibition on these entities purchasing telecommunications services from the BOC and then advertising them with electronic publishing, making the services available together from the single entity, and providing bundled discounts. Any restrictions on these activities would prevent these entities from offering services the same way that competing electronic publishers offer services and would frustrate Congress's intent that these entities be encouraged to bring new services to consumers.

Time Warner (p. 24) makes a similar mistake when it states that the "statute unambiguously prohibits joint marketing between a BOC and an in-region electronic publishing separated affiliate...." Time Warner (p. 25) attempts to clarify this as meaning that "both BOC in-region electronic publishing joint ventures and BOC in-region electronic publishing separated affiliates are prohibited from jointly marketing their electronic publishing services with the BOC's local exchange services." Actually, §274(c)(1) states that "[e]xcept as provided in paragraph (2)...a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate...." Congress placed this qualified restriction[8] on the BOC, not on the separated affiliate. The separated affiliate is free to purchase BOC services and market them as part of a package like any other electronic publisher. This ability is necessary in order for the separated affiliate to conduct business and help bring new services to consumers, as intended by Congress. Thus, Time Warner's interpretation would eviscerate §274 and must be rejected.

Time Warner also tries to expand the restriction on joint marketing by expanding the entities to which Congress applied it. Time Warner (p.27) states "moreover, it is self-evident that any electronic publishing joint marketing restrictions placed on a BOC must also be applied to the affiliates of the BOC." Time Warner (p. 28) adds: "The import of these provisions [the definitions of both "affiliate" and "Bell operating company" in §274] requires maximum separation between the in-region provision of electronic publishing by the separated affiliate (or joint venture), on the one hand, <u>and any other service or activity by the BOC or any BOC affiliate</u>, on the other hand. By its terms, section 274 explicitly constructs a firewall around the separated affiliate or joint venture and all other BOC enterprises." (emphasis in original)

Time Warner's attempt to rewrite the statute must be rejected. If Congress wanted the joint marketing restriction to apply to the BOCs' affiliates it would have applied it to them, as it did twice in §274(a), which restricts a BOC "or any affiliate" from engaging in electronic publishing disseminated by means of the BOC's "or any of its affiliates' " basic telephone service. It is sound policy that Congress applied the restriction on joint marketing to fewer entities than it applied the restriction on engaging in electronic publishing, since joint

[8] The prohibition is qualified by the three exceptions in §274(c)(2), discussed in the text below.

marketing is a more limited activity and raises fewer of the concerns Congress intended to protect against. Consistent with this approach, Congress carefully defined "Bell operating company" for purposes of §274 to be broader than in §3, but not so broad as to include all affiliates. The §274 (i)(10) definition of a BOC includes affiliates that are owned or controlled by the BOC, but does not include an electronic publishing joint venture, affiliates under common ownership or control with the BOC, or affiliates that own or control the BOC. In addition, as discussed above, the joint marketing restriction applies in one direction only. It applies to the joint marketing activities of the BOC for or in conjunction with the separated affiliate in §274(c)(1)(A) or the affiliate in §274(c)(1)(B) . The restriction does not apply to separated affiliates or affiliates themselves. Time Warner's proposed "firewall" around each of these entities would frustrate Congress's goal to apply restrictions only where needed to ensure protection and to avoid restrictions that would serve only to hamper the provision of new services to consumers. The "firewall" also would frustrate the application of Congress's three express exceptions to the joint marketing restriction, discussed below.

Joint Telemarketing -- Permissible joint telemarketing is very broad. Ameritech (pp. 19-21) and NYNEX (pp. 20-21) describe the variety of activities that BOCs may perform as joint telemarketing, which will help bring benefits to consumers through one-stop shopping. As NYNEX (p. 21) states, "Congress did not restrict the inbound telemarketing services a BOC may provide to a separated affiliate in any way, except to require the BOC to make such services available to all electronic publishers 'on request, on nondiscriminatory terms.' "[9]

Teaming or Business Arrangements -- Time Warner (p. 24) misconstrues teaming or business arrangements as limited to BOC provision of "the necessary facilities and telephone service for electronic publishing...." Actually, §274(c)(2)(B) states that the BOC may "provide facilities, services, and basic telephone service information as authorized by this

[9] U S West (p. 11) correctly explains that the nondiscrimination requirement pertains to all electronic publishers offering comparable electronic publishing services to those offered by the separated affiliate and does not require the BOC to design different types of telemarketing services for a potentially infinite variety of electronic publishers.

section...." We discussed in our Comments (pp. 16-19) the broad nature of this provision. BellSouth (p. 19) correctly states that "the permitted teaming or business arrangement is more substantial than a coordinated joint marketing or sales campaign or joint bid preparation arrangement."[10] YPPA (P. 8) correctly explains that the BOC and the other teaming entity may "coordinate their activities so that the customer obtains a 'complete' package of the desired products or services" and that teaming "may include joint sales activities..., through advertising, premise visits or telemarketing."

Joint Ventures -- Time Warner (p. 14) also misconstrues the BOC joint marketing activities that are allowed for joint ventures in its statement that "[s]ection 274(c)(2)(C) permits the BOC to provide very limited 'promotion, marketing, sales or advertising personnel and services' to the joint venture." (emphasis added) Time Warner offers no support for its statement that this provision of personnel and services must be "very limited." Congress did not limit them and neither should the Commission. The Commission should honor Congress's intent to encourage BOC participation in joint ventures in order to bring new services to consumers.[11]

D. The FCC Should Reject Proposals For New Nondiscrimination Safeguards That Are Not Needed And Would Decrease Benefits To Consumers(¶¶64-67)

1. Existing Safeguards Are Much More Than Is Needed (¶65)

Time Warner (p. 3) states that "[t]he Commission must guard against discrimination by requiring BOC compliance with the heightened nondiscrimination standard contained in section 274." (emphasis added) Time Warner (p. 22) discusses this supposed "heightened nondiscrimination standard" in the context of the §274(d) requirements, and states

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[10] BellSouth (p. 19) also correctly explains that the nondiscrimination obligation does not pertain to with whom the BOC must team, but rather means "that the BOC may not give preference to the 'teaming or business arrangement' enterprise in the BOC's conduct of its regulated common carrier operations."

[11] NAA (p. 9) is correct in its discussion of the "nonexclusive basis" provision of §274(c)(2)(C) including that "this provision is not intended to address contracts between a BOC and an electronic publisher regarding the purchase of basic transmission services."

that, although *Computer III* safeguards, including ONA, "have not been useful to enhanced service providers generally," they should be applied to BOCs here. Similarly, MCI (p. 6) states that the ONA requirements, although inadequate to prevent discrimination, should be applied under §274(d).

Actually, unlike §272, §274 does not contain a general nondiscrimination requirement. Section 274(d) specifically requires that BOCs provide access and interconnection for basic telephone service at just and reasonable rates that are tariffed (so long as the rates are subject to regulation) and that meet a per unit pricing requirement. The nonstructural safeguards, in addition to §202, however, are much more than is needed to implement these specific nondiscrimination requirements in §274(d). Requiring both structural and nonstructural safeguards for interconnection would be particularly restrictive under §274 because it contains even more severe structural separation requirements than §272. To the extent that the Commission decides that additional safeguards are needed, however, it should retain existing *Computer III* and *ONA* safeguards.

The existing safeguards have the advantage of being well understood and tested. They have worked well for years. Time Warner's and MCI's criticisms of ONA are without merit. The reason that ESPs purchase few interstate ONA services is because of the ESP exemption from access charges, a "temporary" exemption established in 1983 when the enhanced service industry was considered to be an "infant" industry in need of protection from "rate shock."[12] The exemption allows ESPs to use local, intrastate business services and avoid paying access charges that other customers are required to pay for interexchange access services. The ESPs' purchase of intrastate services, however, does not undermine ONA. The Commission established ONA based on both intrastate and interstate services, and the Commission approved the BOCs' ONA plans only when it was satisfied that state tariffing methodologies met the Commission's ONA standards.[13] Thus, the ONA safeguard is effective regardless of whether

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[12] *MTS and WATS Market Structure*, CC Docket No. 78-72, 97 FCC 2nd 682 (1983).

[13] *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, 4 FCC Rcd 1, paras. 283-339; 5 FCC Rcd 3103, paras. 79-88 (1990).

ESPs purchase intrastate or interstate services.

No new restrictions should be created. With increased competition, there is less reason than ever for extra layers of new regulations and restrictions that would destroy the balance created by Congress between providing protection and encouraging services for consumers.

2. *Section 274(d) Does Not Require BOCs To File Rates For Services That No Longer Are Subject To Tariff Regulation (¶67)*

Time Warner (p. 22) asserts that, even after "any eventual relaxation of tariff requirements, the Commission should require that BOCs publish the rates charged electronic publishers by filing a list of rates charged with the Commission." In the §274(d) requirement, Congress did not require tariffing of previously detariffed services. Once the services are tariff deregulated, the Commission will have determined that competition will keep the rates just and reasonable and that general rate filings are not needed. The Commission has many times acknowledged that, wherever possible, the market -- not regulation -- should control prices.

Until the §274 requirements sunset, contracts between the BOC and its separated affiliate or joint venture will be filed with the Commission and made publicly available pursuant to §274(b)(3). Requiring the unnecessary regulatory filings proposed by Time Warner, however, would be contrary to Congress's "pro-competitive, de-regulatory" goals.[14] As YPPA (p. 10) states: "Once the rates for basic telephone service are no longer subject to regulation, this section [§274(d)] is no longer applicable. ...The marketplace, rather than regulation, will determine the appropriate price for basic local telephone service, with the electronic publisher able to choose among providers."

3. *Volume Discounts For Electronic Publishers Are Lawful Under §274(d) (¶67)*

Time Warner (p. 21-22) asserts that §274(d) requires that BOCs charge all electronic publishers the same prices for access and interconnection services and, thus, requires

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[14] *See NPRM* ¶1.

uniform rates. Significantly, Time Warner does not say that §274(d) prohibits volume discounts. Bell Atlantic (pp. 11-12) is correct that volume discounts are not in conflict with the §274(d) requirements. As we explained in our Comments (pp. 22-23), the BOC has satisfied the requirements so long as it offers all electronic publishers reasonable units of service at prices that are no higher than those the BOC charges for the same units to any other electronic publisher or to any separated affiliate engaged in electronic publishing.

4. Where Appropriate, BOCs Should Have The Choice Of Providing Identical Services Or Services With Functional Equality

MCI (p. 7) states that, "in providing services to competitors, the BOCs should afford them functional equality <u>or</u> service of equal quality relative to the services the BOCs provide their affiliates." (emphasis added) As we explained in our August 30, 1996 Reply Comments (pp. 12-13) in CC Docket No. 96-149 on in-region interLATA services, BOCs should not be required to provide a requesting entity with an identical outcome to that provided to its affiliate, where this would require the BOC to provide services to the requesting entity that are different from those provided to the affiliate. Ensuring equality of the end result on the other carrier's network for infinite types of service requests would be impossible to do and to enforce. Consistent with MCI's comment, however, the BOCs should be allowed to provide functional equality instead of identical services where it is more appropriate. See, for instance, <u>Part IV C</u> below concerning BOC collocation of enhanced service equipment and price parity for third party ESPs.

IV. Telemessaging Service Is Subject To Section 260, Which The Commission Should Implement Via Existing Safeguards (¶¶75-77)[15]

A. Telemessaging Services Are Not, And Should Not Be, Subject To Structural Separation Requirements (¶75)

VoiceTel (pp. 11-12) asserts that, even though Congress did not do so, the Commission should "require the establishment of a separate affiliate for all incumbent LECs[']" telemessaging services. VoiceTel's proposal would require voice mail services that Pacific Bell and other BOCs have offered for years on an integrated basis to be provided by separated affiliates. Yet VoiceTel does not attempt to introduce even a shred of evidence to support its radical proposal. In contrast, the evidence in favor of retaining integration is overwhelming. The Commission's *Computer III* policy of encouraging BOC integration of enhanced services has been a huge success and brought efficiency benefits to consumers. The Commission began its integration policy ten years ago and did so specifically because voice mail was not available to the mass market.[16] With integration actually in place for less than eight years, the BOCs are providing voice mail to millions of customers.[17] Moreover, in the years that the BOCs have provided voice mail under *Computer III* nonstructural safeguards, we know of no formal FCC complaints by ESPs concerning the BOCs' provision of this or other enhanced services or of any discrimination revealed by the BOCs' nondiscrimination reports filed with the FCC.[18] Clearly,

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[15] ATSI (p. 6) incorrectly includes paging in its list of telemessaging services. Paging is a Commercial Mobile Radio Service ("CMRS") subject to Titles II and III of the Communications Act, as amended. In addition, over a decade ago, the Commission analyzed the nature of wireless offerings and concluded that the wireless family of services can be provided as a whole without regard to the distinction of CPE and enhanced/information services. *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies*, CC Docket No. 84-637, 57 Rad. Reg. 2d 989 (1985).

[16] In 1986, the FCC found that structural separation requirements had "prevented consumers, and particularly small-business and residential consumers," from being offered network-based voice messaging services. *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, CC Docket 85-229, *Phase I, Report and Order*, 104 FCC 2d 958, para. 90 (1986) ("*CI-III Phase I Report and Order*").

[17] *See, e.g., Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, 10 FCC Rcd 8360, para. 37 (1995) ("*CI-III Further Remand NPRM*").

[18] *See id.* at para. 29.

the Commission should reject VoiceTel's proposal and allow the BOCs to continue to provide telemessaging services on an integrated basis under the 1996 Act in order to bring these services to even more consumers.

B. The Obligations Of §260 Can Be Completely Addressed Via The Existing Computer III And ONA Requirements, Which Are Entirely Consistent With §260 And Should Be Applied To All ILECs (¶77)

VoiceTel (pp. 3-4) proposes a separate affiliate under §260 as the means of ensuring against discrimination, whether the discrimination is "reasonable or just, or unreasonable or unjust." Obviously, Congress did not believe that integration was in conflict with the nondiscrimination that it intended under §260, or Congress would have required structural separation here, as it did in §§272 and 274. Congress appropriately balanced protectionism with the need to bring new services to consumers.

Contrary to VoiceTel's (p. 4) and ATSI's (pp. 5-6) unsupported arguments, §260 does not impose greater obligations on LECs providing telemessaging service than currently exist under §§201 and 202. Instead, §260 sets forth more specific obligations. Under §260(a)(2), the ILEC may not "prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services." Use of the words "its telemessaging service" shows that Congress expected the ILEC to provide its own integrated telemessaging services. This means that the ILEC can use its own resources, including personnel and space, to provide telemessaging services, even though it need not do the same for other telemessagers. Section 260 recognizes that this integration is beneficial and should be allowed in conjunction with nonstructural safeguards.

BellSouth (pp. 25-26) correctly states that no telemessaging services should be subject to the structural separation rules of §272 which Congress intended for non-telemessaging interLATA information services. BellSouth explains that *Computer III and ONA* policies are effectively subsumed by the nondiscrimination requirements of §260(a) and that "no new implementing regulations are needed." Even VoiceTel (p. 6) "is not suggesting that the